

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

The University of California -  
Lawrence Berkeley National Laboratory  
1 Cyclotron Road  
Berkeley, California 94720

Respondent.

Docket HWCA 20040523

CONSENT ORDER

Health and Safety Code  
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and The University of California - Lawrence Berkeley National Laboratory (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1 Cyclotron Road, Berkeley, California 94720 (Site).<sup>1</sup>

1.3. Inspection. The Department inspected the Site on April 26, 2003, March 16, 2004, and June 29, 2005.

1.4. Authorization Status. The Department authorized Respondent to manage hazardous waste by a Hazardous Waste Facility Permit (HWFP) issued in May, 1993. Respondent timely filed its application for renewal. As required by regulation, the Department has allowed Respondent to continue to operate under the terms and conditions of its expired modified HWFP while Respondent undergoes the permit renewal process.

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<sup>1</sup> Respondent also operates at 2700 7<sup>th</sup> Street, Berkeley, California 94710 (LBNL-7<sup>th</sup>). The Respondent does not have a permit, certificate, registration, or interim status document to handle, treat, store and/or dispose of hazardous waste at LBNL-7<sup>th</sup>. Respondent's activities at LBNL-7<sup>th</sup> are limited to that of a hazardous waste generator.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

## 2. VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code, section 25160, subdivision (b)(1), and section 25201, subdivision (a), in that, on at least five separate occasions, between December, 2001, and November, 2002, Respondent shipped, without a manifest, hazardous waste from its main Site to LBNL-7<sup>th</sup>, a location not authorized to accept off-site hazardous waste.

2.1.2. Respondent violated Health and Safety Code, section 25201 subdivision (a), and the HWFP, Sections II.N.1 and III.B.2, in that, on or about April 8, 2002, Respondent received hazardous waste, a 30 gallon container of waste transformer oil, shipped on manifest 21437715 from LBNL-7<sup>th</sup>. Pursuant to the HWFP, Respondent is not authorized to receive any hazardous waste generated outside the boundaries of LBNL (as indicated in Figure 1 of the permit), other than the Donner & Melvin Calvin Laboratories.

2.1.3. Respondent violated Health and Safety Code, section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.20, subdivision (b), in that, on or about April 8, 2002, Respondent shipped hazardous waste, a 30 gallon container of waste transformer oil, on manifest 21437715 from LBNL-7<sup>th</sup> to its main Site.

2.1.4. Respondent violated Health and Safety Code, section 25202, subdivision

(a), California Code of Regulations, title 22, section 66262.34, subdivision (e)(1)(B), and section 66270.30, subdivision (a), in that, on four occasions between January 1989, and March, 2004, Respondent held hazardous wastes in unauthorized areas (Satellite Accumulation Areas) in excess of one year.

### 3. SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. All violations noted above have been adequately corrected based on documents submitted on August 13, 2004, and April 28, 2006.

3.1.2. Within 30 days of the effective date of this Order, Respondent shall evaluate existing operating records (i.e., "shoebox tracking database") to locate any additional containers that may have been managed at a satellite accumulation area in excess of one year and notify the Department of its findings.

3.1.3. (a) Originally, during the 2003, 2004, and 2005 compliance inspections, Respondent was cited for violations of permit conditions requiring that hazardous waste be removed from satellite accumulation areas within 275 days, rather than the 365 days allowed by regulation.

(b) It has been determined that the HWFP expressly states that the section requiring removal within 275 days is not a permit condition. Therefore, there is no violation for storage between 275 and 365 days. However, the inclusion of such a non-directive provision in the HWFP is inappropriate.

(c) Respondent is directed, within thirty days of the effective date of this Order, to submit a permit modification to the Department deleting any and all non-directive requirements from the HWFP. Pursuant to California Code of Regulations, Title 22, Division 4.5, Chapter 20, Appendix I, section A.1., such a modification would be a Class 1 modification, however, for the purposes of this Order it shall be a Class 1\* modification. In the event that Respondent shall fail to submit said modification as directed, all conditions of the HWFP shall be deemed directive in nature.

3.1.4. Respondent shall not receive any hazardous waste generated or shipped from outside the boundaries of LBNL (as indicated in Figure 1 of the permit), other than the Donner & Melvin Calvin Laboratories.

3.1.5. Respondent shall comply with all terms, requirements, and conditions set

forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent to:

Patricia Barni, Section Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 210  
Berkeley, California 94710-2737

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice, guidance, suggestions, or comments by the shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of Respondent's operations, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to

employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary.

Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any

contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### 4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Consent Order.

4.6. Severability. If any provision of this Consent Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Consent Order shall continue in full force and effect.

4.7. Entire Agreement. This Consent Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supersede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Consent Order, the Parties are not relying on any representations not expressly contained in this Consent Order.

4.8. Counterparts. This Consent Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

## 5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$28,000, which includes \$7,000 as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Payment is due within 30 days from the effective date of this Order.

5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Patricia Barni, Section Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 210  
Berkeley, California 94710-2737

and

James J. Grace  
Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### 6. EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the Department.

Dated: 3-1-2007

Original signed by David C. McGraw

David C. McGraw  
Associate Laboratory Director/Chief Operating  
Officer  
The University of California -  
Lawrence Berkeley National Laboratory  
Respondent

Dated: 3-13-2007

Original signed by Patricia Barni

Patricia Barni, Section Chief  
Statewide Compliance Division  
Department of Toxic Substances Control